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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. SEAN TRAVIS CRUMPLER, Defendant and Appellant.	E035407 (Super.Ct.No. RIF100848) OPINION

APPEAL from the Superior Court of Riverside County. Christian F. Thierbach, Judge. Affirmed.

Cara DeVito, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Pamela A. Ratner Sobeck, Supervising Deputy Attorney General, and David Delgado-Rucci, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Sean Travis Crumpler of one count of solicitation of a lewd act upon a child. (Pen. Code, § 653f, subd. (c).)[1] Ultimately, the trial court suspended sentence and placed defendant on probation for 60 months, following 180 days in county jail. The court imposed several terms of probation, including that defendant register as a sex offender, pursuant to section 290, subdivision (a)(2)(a), and that he be prohibited from using the internet except for work purposes.[2]

On appeal, defendant contends that: 1) the lifelong requirement of registering as a sex offender, pursuant to section 290, subdivision (a)(2)(a), violates the Eighth Amendment's ban on cruel and unusual punishment; and 2) the probation condition limiting access to the internet violates the First Amendment and should be modified to be less restrictive. We disagree and affirm the judgment.

FACTUAL BACKGROUND

The following statement of facts summarizes the facts relevant to the issues on appeal:

On December 4, 2001, Bobby Sabeh entered an online chat room on "Gay.com" and started up a chat with defendant. During the conversation, defendant asked Sabeh his

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[1] All further statutory references will be to the Penal Code, unless otherwise indicated.

[2] We note that, at the time of sentencing, the court told defendant that he was prohibited from using the internet, "except for [his] employment." However, the minute order states that defendant was prohibited from using the internet for any purpose "except for school or work."

age and whether he had any younger brothers, sisters, nieces, nephews, or cousins. Sabeh believed the questions had a sexual connotation, so he decided to see where the conversation would lead. Sabeh lied and told defendant he had a seven-year-old cousin named David. Sabeh asked defendant what he needed with David, and defendant gave him a graphic description of the sexual act he wanted to perform with David. Sabeh was disgusted but told defendant that he would be willing to assist him in any manner. Sabeh pretended to agree to help defendant in order to see if defendant was serious. They then exchanged phone numbers in order to keep in touch. Thereafter, Sabeh spoke briefly with defendant on the phone, and then called the police. Sabeh worked with the police to record conversations with defendant. Defendant was eventually taken into custody.

Defendant now appeals.

ANALYSIS

I. The Requirement to Register as a Sex Offender is Not Cruel and Unusual Punishment

Defendant claims that the lifelong requirement to register as a sex offender, pursuant to section 290, constitutes cruel and unusual punishment under the Eighth Amendment. As defendant readily acknowledges, this claim has recently been rejected by the California Supreme Court in *In re Alva* (2004) 33 Cal.4th 254 (*Alva*). Defendant seeks to preserve this issue for federal review.

Defendant was convicted of one count of solicitation of a lewd act upon a child, in violation of section 653f, subdivision (c). Section 290, subdivision (a)(1) imposes a mandatory, lifelong sex offender registration requirement on persons convicted of certain

sex-related crimes, including solicitation of a lewd act upon a child, in violation of section 653f, subdivision (c).

In *Alva*, the defendant had been convicted of a misdemeanor count of possession of child pornography. (*Alva*, *supra*, 33 Cal.4th at p. 260.) The trial court ordered the defendant to register as a sex offender, pursuant to section 290. The defendant appealed on various grounds, including a challenge to the lifetime sex offender registration requirement on the ground that it constituted cruel and/or unusual punishment. (*Ibid*.) In its detailed analysis, the Supreme Court reviewed the history of sex offender registration and the various cases addressing the constitutionality of the lifetime registration requirement. The Supreme Court concluded that "a requirement of mere *registration* by one convicted of a sex-related crime, despite the inconvenience it imposes, cannot be considered a form of 'punishment' regulated by either federal or state constitutional proscriptions against cruel and/or unusual punishment." (*Id*. at p. 268, italics in original.)

We are bound by the decision in *Alva*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Thus, we must reject defendant's claim.

II. The Condition That Defendant Have Limited Access to the Internet Was Proper Since it Was Related to the Offense

One of the conditions of probation that the court imposed on defendant was that he "not use any computer or computing devices capable of being connected to the internet and not any except for [his] employment." Defendant complains that this probation condition restricts his First Amendment rights to "free speech and freedom of association

with other adults, to send and receive e-mail, to communicate by instant message ('IM') or in chat rooms, and to buy and sell over the internet." (Emphasis in original.)

We first note that defendant never objected to the condition when it was imposed; consequently, he has waived any defect in the condition. (*People v. Welch* (1993) 5 Cal.4th 228, 234-235 (*Welch*).) In his reply brief, defendant argues that a probation condition that is unconstitutional cannot lawfully be imposed under any circumstances. Therefore, he can raise this challenge for the first time on appeal. We disagree. Probation conditions may limit constitutional rights if reasonably necessary to meet the goals of probation. (*People v. Bauer* (1989) 211 Cal.App.3d 937, 940-941.) Moreover, "[a] defendant who contends a condition of probation is constitutionally flawed still has an obligation to object to the condition on that basis in the trial court in order to preserve the claim on appeal. [Citation.]" (*People v. Gardineer* (2000) 79 Cal.App.4th 148, 151.) Here, defendant failed to object on any grounds. When the court asked defendant if he understood the terms and conditions of probation and if he accepted them, defendant simply replied, "Yes."

Notwithstanding the waiver, defendant's claim fails on the merits. "In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1. [Citations.]" (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120-1121 (*Carbajal*).) The criteria for assessing the validity of a condition of probation were set forth by our Supreme Court in *People* v. *Lent* (1975) 15 Cal.3d 481 (*Lent*): "A condition of probation will *not* be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted,

(2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .' [Citation] Conversely, a condition of probation which requires or forbids conduct which is not itself criminal *is* valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*Id*. at p. 486, italics added.) "As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or '"exceeds the bounds of reason, all of the circumstances being considered."' [Citations.]" (*Welch*, *supra*, 5 Cal.4th at p. 234.)

Although the probation condition may have restricted defendant's First Amendment rights, it was nonetheless valid because it was reasonably related to defendant's crime and to preventing future criminality. Defendant entered a chat room on the internet in order to find someone willing to help provide him with a minor for sexual purposes. Thus, the probation condition limiting defendant's internet use to work purposes was clearly related to his offense. Moreover, the probation condition served the important goals of protecting the public and of deterring defendant, during the probation period, from reverting to similar conduct.

Defendant relies upon *In re Stevens* (2004) 119 Cal.App.4th 1228, in which the appellate court held that a parole condition prohibiting a convicted child molester from using the internet was unreasonable. (*Id*. at p. 1231.) *In re Stevens* is distinguishable in two significant ways. The defendant in *In re Stevens* did *not* use a computer or the internet to commit his crime, and the contested parole condition completely prohibited his use of the internet. (*Id*. at p. 1231.) Thus, the parole condition clearly was not related

to the defendant's offense and was not reasonable. In contrast, in the instant case, defendant used the internet to commit the crime, and the probation condition does not strictly prohibit his use of the internet, but rather simply limits it.

Although the challenged internet condition forbids conduct which is not itself criminal and implicates defendant's exercise of First Amendment rights, the trial court did not abuse its discretion in imposing such condition because the condition is narrowly drawn and is reasonably related to defendant's convicted crime and his possible future criminality.

DISPOSITION

The judgment is affirmed.

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/s/ Ward
J.

We concur:

/s/ Hollenhorst
Acting P. J.

/s/ McKinster
J.